



STATE BOARD OF EQUALIZATION

February 8, 1968

[X]

Gentlemen:

Thank you for your letter of February 1, 1968 and the memo concerning salted cooking wines.

As I stated in our telephone conversation, a sales tax counsel ruling was made on October 11, 1960 that salted burgundy and sherry wines, even though sold to consumers for use in cooking, did not qualify as exempt food products under Section 6359 of the Revenue and Taxation Code.

As you pointed out in your memo, Section 5362 of the Internal Revenue Code was amended on December 1, 1967 by the addition of subsection (d) which provides that wine or wine products, containing not more than 21 percent alcohol by volume, rendered unfit for beverage use, may be withdrawn from bonded wine cellars free from the federal wine excise tax.

According to Senate Report No. 489, concerning H.R. 1282, tax-free withdrawal of wine from bonded wine cellars was proposed as a means of disposing of an oversupply in cases of fruit surpluses. The wine to be withdrawn would be used for salted cooking wines, and food flavoring products and other purposes. As stated in the report, "To guard against evasion of the alcoholic beverage taxes, the bill [H.R. 1282] provides that the wines so withdrawn must be rendered unfit for beverage use."

In your memo, you point out that Section 23004 of the Business and Professions Code (Alcoholic Beverage Control Act) defines alcoholic beverage as including alcohol, spirits, liquor, wine, beer and liquids and solids containing these substances "which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances."

You further point out that Section 23112 of the Business and Professions Code provides that the Alcoholic Beverage Control Act does not prevent or restrict the use of tax-free wine under regulation of the United States Government in the manufacture of flavoring extracts and food products if the products are "unfit for beverage use."

In view of the foregoing, it is your contention that salted wine which is "rendered unfit for beverage use", as that term is used in Section 5362 of the Internal Revenue Code and is not "fit for beverage purposes", as that term is used in Section 23004 of the Business and Professions Code, should be regarded as an exempt food product.

Section 6359 of the Revenue and Taxation Code defines “food products” as including fruit and fruit products and as excluding “venous liquors”.

A substance containing wine is concededly a fruit product, however, if it is a “vinous liquor” it does not qualify as a “food product”.

Webster's Third New International Unabridged Dictionary defines “liquor” as “something drunk, as a beverage” and “a usu. strong distilled alcoholic beverage (as whiskey, rum) rather than a fermented [beverage] (as wine, beer).” The word “vinous” is defined as “made with, or containing wine.” Thus, a “vinous liquor” must be capable of being drunk as a beverage. In our opinion, wine which has been “rendered unfit for beverage use” by the addition of salt, is a “fruit product” and not a “vinous liquor”. Accordingly, it qualifies as a food product under Section 6359 and Ruling 52.

In view of the foregoing, the sales tax ruling of October 11, 1960, that salted burgundy and sherry wines do not qualify as food products, is hereby superseded.

Very truly yours,

George A. Trigueros
Tax Counsel

GAT:smk [lb]